

necessarily include the areas to be searched for claim 7. Thus, the search and examination of both Groups I and II would not entail any additional burden for the Examiner.

It is further noted that the present application is a national phase application under 37 USC § 371 of a PCT International Application. As such, the unity of invention in this case must be analyzed under the context of PCT rule 13.1 for a single inventive concept. In the present case, the Examiner has not even noted the PCT rules relating to unity of invention, so it appears that the Examiner has improperly failed to analyze the situation under PCT Rule 13.

Indeed, it is noted that the PCT International Search Report, issued by the U.S. Patent and Trademark Office (USPTO) as the ISA, grouped all of claims 1-25 in the single Group I. Applicants submit that this National Phase Application should be analyzed in the same manner for unity of invention, so that the Examiner's Groups I and II should be combined to permit examination of all of claims 1-25.

Under Article 27 (1) of the Patent Cooperation Treaty, the USPTO is not permitted to require compliance with different regulations relating to the contents of the International

application. Thus, the U.S. application must be examined for unity of invention consistent with the Patent Cooperation Treaty, not just giving verbal assent to the unity of invention standard, but an actual application of that standard. See *Caterpillar Tractor co. v. Commissioner of Patents and Trademarks*, 231 U S P Q590 (E.D.VA 1986).

As a result, applicants submit that the Examiner's Restriction Requirement is improper, to the extent that the claims of Groups I and II should be combined, to permit examination of all of claims 1-25. In accordance with this revision, the applicants elect to prosecute 1-25.

If, however, the Examiner maintains the full scope of the Restriction Requirement, then applicants elect to prosecute the claims of Group I.

Favorable action and early allowance of the claims are requested.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Leonard Svensson (Reg. No. 30,330) at (714) 708-8555 the California office, to conduct an interview in an

effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,

BIRCH, STEWART, KOLASCH & BIRCH, LLP

By 
Leonard R. Svensson, #30,330

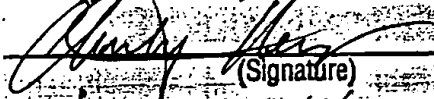
LRS/clh
3759-0116P

P.O. Box 747
Falls Church, VA 22040-0747
(703) 205-8000

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail, postage prepaid, in an envelope to: Commissioner of Patents and Trademarks, Washington

D.C. 20231 on: 1-14-02
(Date of deposit)

BIRCH, STEWART, KOLASCH & BIRCH, LLP


(Signature)
January 14, 2002
(Date of Signature)